

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 90-28

Date issued: October 26, 1990

Requested by: Senator Adam Krauter
District 35

- QUESTION PRESENTED -

Whether upon restoration of spending authority the Superintendent of Public Instruction must make foundation aid payments under N.D.C.C. ch. 15-40.1 on a pro rata basis for both per-pupil aid and transportation aid as calculated under the chapter.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that upon restoration of spending authority the Superintendent of Public Instruction must make foundation aid payments under N.D.C.C. ch. 15-40.1 on a pro rata basis for both per-pupil aid and transportation aid as calculated under the chapter.

- ANALYSIS -

On March 29, 1990, I issued an opinion which dealt with the converse of the question presented in this opinion. N.D. Op. Atty's Gen. 90-10. My opinion was that spending reductions resulting from the December 5, 1989, referral election by the Superintendent of Public Instruction for foundation aid under N.D.C.C. ch. 15-40.1 must be made on a pro rata basis with respect to per-pupil aid and transportation aid. Id.

Now, due to improved fiscal circumstances, some of the previously reduced spending authority has been restored.

The Legislature has determined that per-pupil aid and transportation aid are to be calculated differently, but paid together as foundation aid. N.D.C.C. ' 15-40.1-05 states, in part:

If funds appropriated for distribution to school districts for per pupil and transportation aid become available after May first, the superintendent shall distribute the payments no later than June thirtieth.

N.D.C.C. ' 15-40.1-18 requires the Superintendent of Public Instruction to determine the total amount of payments to be made to school districts for

transportation aid and certify that amount to the Office of Management and Budget. Payments are then to be made "in the same manner and at the same time as other payments from the state to school districts are made, as provided in section 15-40.1-05."

Claims for per-pupil aid and transportation aid payments due under N.D.C.C. ch. 15-40.1 are to be filed annually with the County Superintendent of Schools on claim forms prescribed by the Superintendent of Public Instruction who is to certify the amounts payable to the Office of Management and Budget. N.D.C.C. ' 15-40.1-09.

If all payments cannot be made because of an insufficiency of funds, payments must be "prorated . . . on a fractional basis." N.D.C.C. ' 15-40.1-11. If fractional payments are made, additional payments may be made as funds become available "so as to make full payments under [N.D.C.C. ch. 15-40.1]." Id. Further, if there is an insufficiency of funds "to meet all claims . . . prorated fractional payments . . . shall constitute payment in full." Id.

It is therefore my opinion that upon restoration of the Superintendent of Public Instruction's spending authority, foundation aid payments under N.D.C.C. ch. 15-40.1 must be made on a pro rata basis for both per-pupil aid and transportation aid as calculated under N.D.C.C. ch. 15-40.1.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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Attorney General

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